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. . . A Special Meeting of the CIA RETIREMENT BOARD convened on Monday, 15 November 1971, at 2:30 p.m. with the following present:

Mr. Harry B. Fisher, Chairman

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Guest: Dr. John R. Tietjen, Director of Medical Services

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MR. FISHER: Well, this is a pioneering effort here. I did explain to the Board that [redacted] had applied for disability retirement, that the Board of Medical Examiners had sat on the case and had recommended to me, as Director of Personnel, that his request for disability retirement not be approved. When [redacted] heard about this from me -- I called him just to let him know that I had received such word and I did it rather quickly because I was aware of the fact that Chick ILLEGIB had in a sense burned [redacted] many bridges behind him -- in other words, he seemed to feel that there was no doubt about this being approved and as a result he had given up his job, he had been replaced in his position, and he was off on leave really just awaiting the word. He also was preparing himself for a second career, in a sense, by taking some courses at college at night. He apparently then called the Director's Office to appeal this decision and the Director, through [redacted] asked me for a summary of where it stood. And I explained to him the steps that were necessary, that the next action on my part would be to advise him that it had been disapproved and to indicate to him that he had an opportunity to appeal that decision to the Director. The Director therefore said - Well, that is okay -- that sounds appropriate to me -- let it take its normal course. In other words, he was not going to inject himself at that stage in even looking at this.

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Since that time I have talked to Chick on a couple of occasions and I believe he went back to see Dr. Tietjen with what he felt possibly was some additional information. Dr. Tietjen again considered it and felt that no new evidence had been introduced that would cause them to change their recommendation. Then Dr. Tietjen himself really started me off on this line of thinking by sort of indicating that he could appear before the Board. In reviewing the regulations I found that yes, that was quite appropriate -- wherever there was an adverse determination we could tentatively advise the man of this and get him to appear before the Board. So I called [redacted] and advised him of this, and at that time he said - "I've been trying to get some additional information from another doctor," and he would like to delay appearing before the Board until that was done. As he put it, a "neutral doctor," feeling as he does that [redacted] is the man on this side who is one of the three members of the Board -- not the only one -- and his own doctor who still strongly feels that he is qualified for disability retirement. 25X1A5a1

I subsequently called him and said - "Are you ready? Do you have that additional information?" And he indicated to me at the last conversation that - no, he hadn't gone that route and he was now ready to appear before the Board.

I might say that he is -- Well, I don't want to overstate this, but he is almost reaching irrationality on this subject now and he feels he is being persecuted, I guess is one way of putting it. He just can't comprehend. He also advised me that his doctor will not allow him to go back to work. I indicated to him that there was no reason why his doctor could not say that he was too sick to come to work and therefore he could be on sick leave for an extended period of time without in any way negating a recommendation that he is not disabled for retirement. Now he recognizes this, but I gather that he feels this would leave him in a distraught situation. He wants to bring it to a conclusion. So we will have Chick, I guess, unless anything comes out at this meeting which obviates that requirement, before the Board, and I just thought that before we did it might be well to listen to Dr. Tietjen on this case possibly give you some background upon which you can judge what Chick has to say.

Now there is one other thing I'd like to throw out. I asked Ben to call Andrew Ruddock, head of the Bureau of Retirement and Insurance, to determine if this sort of thing happens in the Civil Service Commission and when it does how do they handle it. Ben reported this orally and I asked him to put it down in writing.

. . . Mr. Fisher then read to the Board the following Memorandum for the Record, dated 15 November 1971, signed by [redacted] Deputy Director of Personnel for Special Programs . . .

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15 November 1971

MEMORANDUM FOR THE RECORD

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SUBJECT: CIARDS Disability Retirement Procedure

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1. On 15 November 1971 I called Mr. Andrew Ruddock, Director of Bureau of Retirement and Insurance. The purpose of my call was to see how he would handle or react to a situation we are encountering under CIARDS.

2. I summarized for Mr. Ruddock the circumstances in the [redacted] case. [redacted] applied for disability retirement and submitted a substantiating opinion from his attending physician. In accordance with CIARDS regulations our Director of Medical Services convened a Board of Medical Examiners. Eventually, the Director of Medical Services issued a recommendation, based on a review of [redacted] case by the Board of Medical Examiners, that [redacted] application for disability retirement be disapproved. I reported that the employee (and I did not use his name during this conversation) was quite upset upon learning of the [redacted] medical recommendation, protesting strongly that he and his physician feel he should not be working, that he is disabled and that he intends to appeal.

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3. I explained to Mr. Ruddock that under our system the Director of Personnel is the administrator and has the equivalent authorities in the disability area that Mr. Ruddock has. I then asked Mr. Ruddock how he would react to or handle this case based on the information which I supplied to him.

4. Mr. Ruddock then said that in BRI the theoretical procedure is that the medical officer gives an opinion and that the ultimate approval or disapproval decision is made by non-medical personnel. The adjudicator is free to accept the advice of medical officers.

5. I asked him if he has ever reversed a medical finding. He answered by saying, not in those terms. He could not remember ever having reversed a medical opinion or recommendation. What he and adjudicators do instead is to meet with the medical officer and discuss the case. Often the medical officer does not really care what the adjudicator will do and, consequently, the adjudicator might decide to approve a case. There are instances where BRI will refer the case to an independent specialist. Rarely do they make a decision based entirely on the opinion of the applicant's examining physician. The primary reason for this is that the physician often is not familiar with the criteria for disability retirement.

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6. I had mentioned in my conversation with Mr. Ruddock that [redacted] was on the Board of Medical Examiners and that his stature in the medical community is regarded as high. Mr. Ruddock said that it is entirely possible that 25X1A5a1 [redacted] might not have had the proper frame of reference of what constitutes disability for retirement purposes. Without such a frame of reference he might well have based his opinion in a look for total incapacity.

7. Returning again to the matter of adjudicators discussing circumstances with a medical officer, Mr. Ruddock said that if the adjudicator concludes that there is genuine doubt in the case that doubt is resolved in favor of the applicant. As in the case of other beneficial legislation, doubts are resolved in favor of employees seeking benefits rather than against them.

/s/

[redacted] 25X1A9a

Deputy Director of Personnel
for Special Programs

Where he said, "What he and adjudicators do instead ..... etc., etc. ..... the adjudicator might decide to approve a case." The way Ben explained this to me, he is saying sometimes the Medical Board or Medical officer has a little trouble in signing a statement that he finds this man disabled for his current employment, but apparently it can be a borderline case where he will say: If you want to overrule me, that is fine, but don't ask me to change my signed statement. I gather that is only if there is this willingness, as opposed to: "By God, he is not!" Now I'm just doing this sort of like an editorial comment here.

Again, editorial comment, it should be an awfully close case before the doubt is resolved in favor of the man. In my discussions with Chick -- and Dr. Tietjen can probably comment better than I on this -- he seems to feel that if they can't find him totally disabled, they won't approve disability retirement. And he doesn't claim total disability, he claims disability to do his present or a similar type of work.

With that, John, as background for these people, I thought maybe you could take it from there.

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DR. TIETJEN: I have a thick file that I can refer to here in terms of places and dates. But if I could just talk with you -- and then we could refer back to those insofar as you might need them.

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I might begin by [redacted]etting you know what our procedure is, to begin with, in processing a disability retirement application. The regulation and the law provides that there be three members of a disability retirement board and at least one of those must be a physician not associated in employment with the Agency. The Board that sat on this particular case consisted of myself as Chairman, [redacted] as member, and [redacted] as member. 25X1A5a1

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MR. FISHER: Just a second, the law does not provide for that but the regulation does. The law says the Director will appoint one or more physicians or surgeons to rule on it. I'm just making the distinction between the statute. I don't think it has any bearing, but I believe it's the regulation that speaks to the three people.

DR. TIETJEN: Now the Board when it sits looks at the evidence which has been submitted by the applicant, which consists of his application and a statement by his supervisor and, hopefully, a statement by the private physician, and whatever other administrative evidence that would be pertinent to a given case. The evidence customarily also includes a report of recent examination by our Office of Medical Services. So in the case of [redacted] for example, [redacted] he was also examined by our Clinical Division. In addition to that he was examined by a member of the Psychiatric Staff. And then when we hold a Board meeting not only the members of the Board are present but the representative of the Clinical Division - the Chief of the Clinical Division, the examining physician, the Chief of the Psychiatric Staff, customarily, and the examining physician, and administrative members such as our Registrar, Special Assistant for Clinical Activities, and a recording secretary. We do have a formal hearing that attempts to give careful consideration to each application.

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So you can see that when [redacted] submitted his application he submitted evidence provided by his physician, by his supervisor, by himself, the administrative evidence that we pulled together to make the case intelligible to us, the product of the C linical Division examination, the product of the psychiatric examination, and in this case we had also sent [redacted] to the third member, the external member, [redacted]

So this is the procedure.

Let me say to begin with that we don't have hard and fast feelings about the case in terms of what is just or unjust, or what is right or what is wrong. I think this type of hearing in a controversial case is highly indicated. We do have a medical opinion and it is our opinion, which has been reaffirmed, that we do not think that this man is disabled for his current job. That does not mean that we do not think that he has impairments. We do think he has impairments but we don't think he is disabled.

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Now then, I'll go back in his history and tell you waht we know about him, and then let me bring it up to date and then I'm going to be open to questions.

[redacted] in our opinion has been a very good, loyal, hard-working, 25X1A8a faithful employee. He has served with the Clandestine Service and with [redacted] primarily, and his qualifications for overseas really stem from his many trips abroad. All of his overseas time was a result of TDY's. He has not had any PCS service overseas. We know him going way back to around 1951, and we have seen him many times. From 1951 until 1962 our record is a very negative record. But beginning around 1962 and sometime after an injury that he had experienced in 1961, our record does contain positive findings. What happened in 1961 was that [redacted] was assigned TDY overseas to a South American area and, according to his statements, while loading ammo a box fell off a conveyor and hit him on the left shoulder. Just how extensive this was at that time it's a little difficult to say, but I think the record reflects it hit his face and his shoulder. And he also had

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some minor foot injury in that particular period. Sometime later he began to notice some difficulties with his left shoulder, since 1962, and he related the difficulties that he was experiencing to this episode in 1961 when this box of ammo fell and hit him. And he brought this to our attention in 1962 - around the period of 1962. Because in order to be precise I'd have to go back to the record. But around that period he was seen by [redacted] who was assigned to the Clinical Division, and as a result of this information he was referred to [redacted] at that particular time, as a possible difficulty with nerve injury, or whatever the associated lesion might be. So [redacted] as you can see, saw him not quite a decade ago -- nine years ago, or thereabouts -- did a complete work-up on him and made a permanent record of him at that time and provided us with the information that it was not his opinion that the subject was suffering from any nerve difficulties. And he recommended, in turn, that there be an orthopedic consultation and as a result of that we then referred [redacted] to [redacted] who is an orthopedic specialist at George Washington Hospital, who also examined him and worked him up, who was of the opinion that the individual did have a muscular difficulty and provided advice.

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Also around that period of time the subject filed a BEC claim. As to the end result of all of that, I am not knowledgeable how that may have turned out. But he filed a BEC claim associating his symptomatology with the ammunition chest falling on his arm.

Now he continued with some degree of symptomatology for a period of time and in 1965 we referred him to [redacted] who is a Neurologist, and he was hospitalized at the time of this episode for a period of some five days during which he was worked up completely - physiologically and otherwise. They found no evidence in 1965 of nerve injury or significant injuries, and his difficulties were treated with traction and he was advised to use traction to relieve his symptoms. Again now, all of this was his complaints about his left arm and his difficulty using the arm the way he had previously -- the

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subjective feeling he had -- and some loss of strength in the left hand -- which were confirmed, by the way, through diagnostic procedures, that there was a loss of strength in the left hand and that there was some weakness in the left arm.

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25X1A5a1 And I make this point because later on around 1967 or thereabouts he thought he noticed some change on the right side in the right arm, and he was developing some weakness on the right side and something similar to the left side. In our examination procedures during this period of time it seemed to us that the left side had stabilized and that there was no progression of findings or symptoms, and on the right side this area did not appear to be troublesome insofar as his duties were concerned. And it kind of came to a head when he put in his application for a disability retirement in which he linked all of his findings and symptoms to this injury back in 1961. Now at this point he was worked up completely by [redacted] a member of the staff, and he was referred to 25X1A5a1 [redacted] and [redacted] went over him again. He was able to confirm that the weakness of the left hand which was evident back in 1962 was still present -- and you can do that through measurement of the grip -- but there was not much evidence that there was any appreciable change in the right side. There was some evidence that the muscles of both arms had atrophied - that is, they had diminished to a certain extent over this period of time.

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We also had him seen psychiatrically, because sometimes if you take your clinical findings and you don't have enough there for a disability retirement, then take your psychiatric findings, and you can add the two together, you might come our with something that says disability. But in this particular case we therefore referred him for psychiatric findings not because we thought he was [redacted] psychiatrically ill. As part of the Board procedures we had a copy of his job description and we had it read into the record, with [redacted] present and all members present so everybody would know what his duties added up to and what was required of him. And the recommendation of the Clinical Division, which customarily speaks first in these instances, was that they did find [redacted] impairment in the individual but they

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could not find him disabled for the duties to which he was assigned. The Psychiatric Staff did not find him disabled, nor did the two together find him disabled. We then held a discussion and it was [redacted] opinion as a member of the Board that this man was qualified for regular occupation, short of arduous duties or heavy lifting. And it was the opinion of [redacted] and myself that the man was qualified for the duties for which he was assigned and that there was not evidence of disability for those requirements. We noted very carefully that the man has impairments but not sufficient as to render an opinion that he is disabled.

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Now after making the finding regarding disability retirement and providing the Director of Personnel with a recommendation, we had the discussions that Mr. Fisher alluded to, and an opportunity was made available for [redacted] to see me. And we sat and chatted, and he went back over his record with me, and he left with me a copy of a memorandum from his private doctor, dated I think 30 September, and an outline of some periods in his life which he thought were referable to what he considered to be this development of symptomatology. And I indicated that we would review this evidence. I had this evidence reviewed by [redacted] and myself, and each of us was asked the question whether this new evidence warranted further hearings by the Board to consider

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new evidence. And it was our combined opinion and our individual opinions that there was not new evidence and that further deliberations on the point were not in order. And so I got together with [redacted] again and advised him of our position in the matter. And I believe that pretty much ends the story at this point.

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[redacted] Did his job description include the responsibility of going overseas for TDY assignments?

DR. TIETJEN: Yes, our record reflects that of recent years we have approved him for TDY and overseas planning.

MR. FISHER: Do you feel that that would then limit his usability -- [redacted]

[redacted] For us it would. Because I feel the manner in which we used him in the 1961 instance, [redacted] and later of course in another very sensitive area, was one which required a great deal of physical activity on his part, both in training the people with whom he worked and in performing the type of training which we gave to them. It was on this ground perhaps that I think I felt when this case first came to my attention way back in 1962 when I worked with him, that there was a definite problem in our using him overseas in the same type of assignment as the one during which he was injured.

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MR. FISHER: When was the last time he was able to serve overseas?

[redacted] I'm not sure. I think the record may show that.

DR. TIETJEN: The question was asked during the metting of the Board of Medical Examiners whether overseas travel was involved, and this was confirmed by our Registrar, who [redacted] added that the subject was disqualified for overseas assignment November of 1965 and disqualified for TDY stand-by in May of 1966. But then qualified for a 30-day TDY to [redacted] qualified for a 30-day TDY to the FE area July 1967, and qualified for a TDY stand-by March 1968, July 1970, and January 1971.

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MR. FISHER: So on an individual request basis he has been approved for TDY.

25X1A9a [redacted] Yes, but for somewhat different utilization than we had used him for earlier. Because I was involved, I think, in that decision in 1965 to disqualify him. But that was an assignment that would have been similar to the one where he was injured actually working with paramilitary personnel.

MR. FISHER: Well what I'm trying to get at a little bit, since 1965 when this question existed, has it really limited his usefulness?

[redacted] It has limited his usability, yes. He has been used abroad in TDY travel but not in the capacity for which he had been used previously -- not direct involvement in [redacted] activity. What we are talking about is a man who actually trained like in the [redacted] the use of all sorts of [redacted] type things -- a job that involved a great deal of personal physical activity -- which I think pretty well ended in 1966. 25X1A8a

MR. FISHER: What I'm trying to ask, he is the one that initiated the request for disability retirement. [redacted] apparently found other ways of achieving this or accomplishing it in providing other duties for him to do, and they, themselves, were not totally dissatisfied with his performance.

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[redacted] That is right, even though they maintained him in the same job with the same responsibilities. But his own personal involvement I think diminished after that.

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[redacted] How old is he?

DR. TIETJEN: I think he is 52 at this point. I think his birthday was November 8th.

MR. FISHER: Ben, let me ask you for the record, really, because I discussed this with you very briefly. Obviously a BEC approved disability would be worth 75 percent of his salary and therefore a much better one for him to obtain. If he attributes all of this to this injury that he incurred overseas and yet he is not pursuing a BEC claim, I have to assume that he feels BEC would never find him disabled under their guidelines.

25X1A9a [redacted] BEC's total incapacity is more rigid a requirement than it is for disability retirement.

25X1A9a [redacted] Who gets in on that decision? Would this same Board?

MR. FISHER: No.

25X1A9a [redacted] First of all, he has a disability --

MR. FISHER: He has an impairment.

25X1A9a [redacted] Which limits the type of duty they can assign him.

25X1A9a [redacted] Secondly, it's service connected?

25X1A9a [redacted] Let me go back. His claim was approved but they put a date on it, that they found beyond a certain date -- and I don't have that date at hand -- he could not show any consequences of the injury which they had approved. So they had in effect approved his disability for a period of time and said beyond this point we see no job-related implications going back to the injury reported, unless he could come in with more evidence -- which he has chosen not to do.

25X1A9a [redacted] Didn't he come to you shortly after the injury and at that time didn't you find impairment?

DR. TIETJEN: Yes.

25X1A9a [redacted] The injury was approved and he got benefits.

25X1A9a [redacted] But they put a cut-off on the time factor concerning it being disabling as far as his work.

25X1A9a [redacted] They found that he had not shown any subsequent disability to that date was related to the injury.

25X1A9a [redacted] And he can't re-open it?

[redacted]: Oh, sure he can re-open it.

MR. FISHER: I feel we can explore it and ask him about this when he comes here. But I think he realizes that BEC gets a little closer to an insurance company's appraisal of what is disabling. In other words, like for a waiver of premium you can't say I'm a little impaired, you have to be totally incapable of work.

[redacted] He could pursue that claim, have it approved, and they wouldn't pay him anything, because he has to show total loss of capacity before he can draw anything. That requirement is stricter and more difficult to establish than one that you are incapable of performing the duties of your position. Because under disability retirement you can go out and work and not lose your disability annuity so long as you don't exceed certain limits. But [redacted] when they put you on total incapacity you are not working and as you begin to work they measure your wage earning capacity and your benefits from BEC will go down as your wage earning capacity goes up. There is a stricter requirement there.

25X1A9a [redacted] Does he plan on doing other things?

MR. FISHER: Yes.

25X1A9a [redacted] Medically how do you view the relationship between the injury and the current impairment?

DR. TIETJEN: This man provides us with findings which are bilateral, left arm and right arm. And he relates, he claims first of all that this is progressive, and secondly, that this is related to an injury back in 1961. And I believe we tend to think at this point that there isn't a great deal of evidence today that these things are continuing to be progressive. We don't have that kind of evidence. And I think we also believe that the burden of proof would be on the individual who claimed that this symptomatology was caused by the injury that occurred back in 1961.

25X1A9a [redacted] That is a lot of words but I don't think you answered the question, John. What do you think medically about the relationship?

DR. TIETJEN: Are you asking me personally?

25X1A9a [redacted] As a doctor.

DR. TIETJEN: Or as Chairman of the Board?

25X1A9a [redacted] As a doctor.

DR. TIETJEN: Well, I find it very difficult to relate the injury to these findings today.

25X1A9a [redacted] Does his physician assert a [redacted] relationship medically? ILLEGIB

DR. TIETJEN: Yes. Yes, he says: "His current problem is a cervical myelopathy and radiculopathy subsequent to an injury in April 1961. This originally involved the left arm and resulted in atrophy of the left shoulder ILLEGIB girdle and arm. Subsequently he has [redacted] experienced development of a similar condition involving the right arm."

25X1A9a So, I would say yes, he relates it.

25X1A5a1 [redacted] Was this question of the linkage discussed with [redacted]

DR. TIETJEN: Yes.

25X1A9a [redacted]: And what was his view? the same as yours?

DR. TIETJEN: Yes, we find it difficult to relate his present symptoms and findings as directly caused by that injury.

25X1A9a [redacted] What was the period for which [redacted] BEC approved him?

25X1A9a [redacted] I can't recall. It was for a period of a couple of years.

25X1A9a [redacted] When did they approve it?

[redacted]: Later on.

In the 1965 period?

[redacted]: Soon after the injury.

He was hospitalized on his own then -- certainly not by BEC.

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[redacted]: Not BEC.

[redacted] That was our own Medical Staff? 25X1A5a1

DR. TIETJEN: We referred him to [redacted] back in 1965 and he was hospitalized for five days at that time. I believe his insurance paid part of that and I know we paid part of it.

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[redacted] Did they examine what the problem was --

DR. TIETJEN: He had this history, and looking into it.

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[redacted] How disabling is it? Can he pick up a suitcase 25X1A9a a two-suiter, for instance? Is it worse than a tennis elbow?

DR. TIETJEN: Well, you can get from [redacted] how it behaves, but it's my understanding that he exercises, and I understand that he plays various sports. That doesn't in any way depreciate the fact that he does have impairment of his left hand.

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[redacted] Wasn't it a doctor's recommendation-- I'm not sure which doctor during which particular period advised him that he take exercises of certain types regularly or there would be greater atrophy than is now the case.

DR. TIETJEN: Yes. He felt at one time he was kind of at the end of the string as to what he could do about this condition, and a physician friend did advise that one of the things he could do would be to maintain physicial fitness through exercise. And he [redacted] subsequently followed that advice. ILLEGIB

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[redacted] This is the sort of thing we might take up when we talk

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ILLEGIB [redacted] with [redacted] Is it possible that as a man now in his 50's, who is an extremely active, very athletic type, that because of that left arm he didn't do as much exercise and that there would be the normal amount of atrophy of the right muscle? In other words, I think my muscles are not as good as they were 10 years ago.

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DR. TIETJEN: We can't give a good explanation or account of the atrophy, period. There is atrophy -- there is atrophy of the left biceps and there is atrophy of the right biceps as compared with measurements taken nine years ago -- there isn't any question about that.

25X1A9a [redacted] But is it the normal atrophy that would occur during that period of time?

DR. TIETJEN: I don't think so. I don't think we could expect this would happen in every individual as just a matter of course. We wondered ourselves whether this could be accounted for by age changes, and we didn't think that this could be accounted for totally on that basis.

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[redacted] What would you attribute it to then?

DR. TIETJEN: Well, you see, we focused our attention on the question of disability, and as to whether this man could work, and whether this disease or condition was progressive, etc. And that is why I'm a little hesitant in answering some of these other questions, because I'm getting into areas which the Board wouldn't necessarily focus on exclusively. And I'm not trying to dodge any answers, and I'd be glad to talk as a doctor on this thing rather than as a Board representative. But there are other things that could give some muscle atrophy in that particular area -- they would be speculative, I think, at this point -- and there might be some type of differential diagnosis as to what they fit. It's a little difficult to explain the atrophy of the right biceps based upon an injury to the left arm. It's not beyond possibility, but it isn't self evident.

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[redacted] My next question is more pertinent. Could you express

ILLEGIB the degree of [redacted] impairment in [redacted] terms of a percentage? ILLEGIB

DR. TIETJEN: No, we did not.

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[redacted] Could you give an order of magnitude? Certainly not 50 percent.

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[redacted] Wouldn't that depend on what he does with this arm?

Can you do it in terms of an adjective - like

ILLEGIB "slight" [redacted] impairment? 25X1A5a1

DR. TIETJEN: I think [redacted] was probably as close to it as you can get in saying that he doesn't think that this man can do arduous work or lift heavy objects, but in terms of anything else - he can do anything else. Now, how you would turn that into a percentage-- There are various tables on that, but it --

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[redacted]: Okay.

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[redacted] In your psychiatric assessment of this injury and of his reactions to it did you find any indications there of a disturbance that would reflect on this case?

DR. TIETJEN: This man is an extremely conscientious individual. He is a good fellow and good material. It's difficult for us to comment on his motivations as to why he applies for disability retirement at this particular period of time. Certainly among other things he seems to indicate that he just doesn't feel as competent about things as he once did, and he appears to be somewhat fearful that he might make the wrong decision at times that might be injurious to

ILLEGIB the [redacted] goal or the activity, and he [redacted] relates this fallibility ILLEGIB or increased fallibility he feels - to this combination that he has of symptoms.

25X1A9a [redacted] That is mental, then -- that is not physical.

Stemming from the physical.

MR. FISHER: John has an even more recent letter -- which he just read from. Chick is pretty overwhelmed, in my opinion -- and this is just from our telephone calls -- by the opinion of his doctor who is telling him: "You are too sick to go to work -- you shouldn't work any more." And Chick takes this pretty seriously.

[redacted] But when you say "sick" there, Harry, do you mean mental or physical? or all over? both?

25X1A9a MR. FISHER: Well of course his doctor doesn't spell it out. I'd like to get at more of that when Chick comes before the Board. But his doctor says: "I have suggested that [redacted] retire on disability because of this problem with his arm and shoulder girdles, etc." Now I don't know what the interrelationship is of an extremely active guy who gradually feels himself or thinks of himself as getting weaker and weaker, and how this affects him in his whole approach to his job. Obviously it has a pretty strong relationship.

25X1A9a [redacted] You mentioned something about a second career that he had in mind, didn't you? We can go into that with him.

MR. FISHER: I think he plans to do some teaching of some kind.

25X1A9a [redacted] Well, John, I gather from what you said that the three doctors on the Board are pretty much in agreement in their conclusions and that there is not much doubt in your minds?

DR. TIETJEN: That is correct.

25X1A9a [redacted] Do you mean the conclusion that he has some impairment? or what conclusion?

25X1A9a [redacted] Whether or not he was disabled.

25X1A9a [redacted] Has he had medication during this period - or is he still under medication of some sort, rather than the traction treatment and what not.

DR. TIETJEN: Well he is certainly under his doctor's care. The question as to medication, I'd have to look that up.

25X1A9a [redacted] In these nine years or so has he been under more or less

constant care? Has he been consulting a physician more or less regularly?

DR. TIETJEN: Yes. Yes, he certainly has consulted with us in this regard and certainly this has been looked into I would say rather extensively.

25X1A9a [redacted] So there is a history of continuing concern on his part, is what I was getting at.

DR. TIETJEN: I think so, taking the nine year history.

I don't have a good answer for your question about the medication. I don't have that answer immediately available. But I would be happy to look into that, and I can forward that answer to you, Harry, if you like.

25X1A9a [redacted] What's the drug (daravon)?

DR. TIETJEN: That is a pain killer.

25X1A9a [redacted] And why cervical traction for this type of thing?

25X1A5a1 DR. TIETJEN: Well, in the summary back in April 1965 in their work-up of him they really didn't come out with obvious pathology. And in fact they say no evidence of peripheral nerve disease was seen, although they felt as though he had some basic nerve disturbance, and he was started on neck traction by [redacted] on an out-patient basis -- and this was symptomatic treatment, and after several treatments of neck traction it began to improve, so, since the treatment seemed to be efficacious, he was kept on it. And they said: We have recommended no restrictions for him as far as his activity is concerned at the present time -- and this is 1965 -- keeping in mind ... etc., etc. ... that severe neck manipulation and direct injury to the neck could produce difficulty. And they felt this was some kind of compressive syndromme at that particular time. So that is how he got on neck traction, as a result of that. And I think he stayed on it for a year and a half or two years. This is something that can be done on an out-patient basis at home.

25X1A9a

[redacted] I now have the BEC file before me. I think it is significant that he filed the BEC report of that 19 April injury on 28 April 1961. The claim was in turn developed with BEC and submitted to them for the first time in June of 1962. They came back and asked for a considerable more amount of information. And then in March of 1963 they disallowed it, the matter of injury in performance of duty not established but left the door open for the submission of additional information.

MR. FISHER: Ben, I'm sorry, but if the man really dropped a case that he was loading on his shoulder, how did they ever get to that conclusion?

25X1A9a

[redacted] They only adjudicate based on the facts which are submitted to them, and they are saying here that the information that was sent to support that was inadequate -- that was sent in April 1961 -- and he must not have developed - or the people that worked with him on this didn't develop a proper submission. They're only able to reach a judgment based on what is in the record.

MR. FISHER: But you don't have enough there to indicate how good a story he had.

25X1A9a
25X1A5a1

[redacted] Yes, it was pretty poor then. They disallowed it. And then there is nothing in the file until-- And we have here, Dr. Tietjen, a copy of [redacted] report in 1965, when the case was obviously reopened. And in June of 1965 we submitted additional information. They said they needed another doctor's report, and there was a further exchange between us and BEC involving Chick, and eventually on December 21, 1965, we got this: "This notice will inform you that the Bureau accepts that this employee bruised his left shoulder April 19, 1961. The symptoms resulting from this injury did not persist beyond June 1963. The complaints of 1965 for which the employee has received medical examinations and care pertaining to the cervical region did not result from the injury of April 19, 1961. He should consider the charges for

all medical services after June 1963 as his personal responsibility. No further examinations or medical treatment are authorized in this case."

MR. FISHER: That is a pretty strong answer. 25X1A9a

25X1A9a Was there some indication here he had a subsequent injury?

25X1A9a

[redacted] Here is the supervisor's statement: [redacted] sustained an incapacitating injury on 19 April 1961 in the course of hazardous 25X1A8a operational duty in the WH area. This injury was possibly exacerbated in 1964 when [redacted] fell from an [redacted] undergoing final acceptance test, narrowly escaping further serious injury. And which he never reported. And when I remember how close to the date of injury in April of 1961 he filed his CA-1-- We searched and we have no evidence that he ever filed for that 1964 injury. And he has never asserted it. Even his disability retirement application attributes his present difficulty to the 1961 injury. So BEC in effect is saying, anything they saw after June 25X1A8a of 1963 doesn't relate to the April 1961 injury.

25X1A9a

[redacted] Does your record show anything, John, on that [redacted] accident?

DR. TIETJEN: We have it dated 6 July 1971 this injury was possibly exacerbated in 1964, as was quoted here. But we have nothing else on that. 25X1A5a1 Only to that extent. 25X1A5a1 25X1A5a1

25X1A9a

[redacted] Well, John, one last question as far as I'm concerned.

25X1A9a Despite the unquestioned stature of [redacted] in the community as a neurologist, I'm sure you are aware that [redacted] does not like [redacted] and feels that he is picking on him. And again, it's [redacted] against his doctor. Now I have no idea where the Board will go from here, but suppose to bring the thing to a conclusion - if we can't otherwise - we suggest that we get a list of four or five other doctors and from which he could pick one of them to go to -- would this be out of order as far as you are concerned?

25X1A9a

25X1A9a

DR. TIETJEN: We have already advised [redacted] that we would be happy to reopen the entire Board consideration if he would present any new evidence. So certainly if that were suggested and he wants to obtain new evidence, we will be happy to do so. But in that case if he produces new medical evidence I think then that the evidence should come back to our Board of Medical Examiners so we can consider the total evidence at that particular time. That was the purpose of meeting with [redacted] recently, was to give him that type of an opportunity to provide new, different, or additional medical evidence. If that is provided at any time, we would be happy to reopen it - without any question we should consider it again.

25X1A9a [redacted] Would this be appropriate within our retirement funds?

DR. TIETJEN: I also want to mention that the Board of Medical Examiners ILLEGIB while it's the adjudicating body it has [redacted] available to it the opinion of our Clinical Division also, which is independent, as it were, from the Board and the Psychiatric Staff. So there are some other parties involved in it. The final adjudication belongs to the Board, but we also, as you know, have the views of at least three other physicians in this case, one of whom is a psychiatrist and two are internists.

MR. FISHER: Any other questions? (No response.)

I thought it might be best, Dr. Tietjen, to do this this way - have you come before the Board but not have you here when Chick is here. Now maybe something will come up when we talk with Chick that we will want to come back to you on.

DR. TIETJEN: I'd be happy to get together with you.

MR. FISHER: I think we have a much better understanding now of the total case that is before us. We thank you very much, Dr. Tietjen.

. . . . Dr. Tietjen withdrew from the meeting at this point . . . .

MR. FISHER: I would like to add to the record, however small it might be, but again an indication of how sure [redacted] was that he would be approved, we have such things from him as a request to extend his period of time to ship his

25X1A [redacted] We have a request from him that instead of paying him his lump sum annual leave, to allow him to work out his annual leave. In other words, all of this doesn't add up to very much except that in the man's own mind he was on his way out.

25X1A9a

[redacted] Yes, he talked to me at great length about his plans over the past couple of years, with I thought a reassurance that he was qualified to

ILLEGIB retire[redacted] under medical disability.

25X1A9a

[redacted] He thought he had the option to retire --

MR. FISHER: Yes, he was planning on medical disability.

Now again, I did say to Chick: If you continue to get your doctor's statement saying you are too ill to work, you could probably continue on your sick leave for a year, at the end of which time you would have earned all the benefits of disability retirement in terms of using up all your sick leave and getting all the credit for that. Except the tax deductible item of $5200.00 a year. Now, I said, Chick, is it worth fighting for all this? He said - yes, I would be in worse shape than ever if I felt I wasn't doing it this way.

25X1A9a

[redacted] That presumes he will retire at the end of that sick leave period in accordance with your advice. He is still on our rolls now, isn't he?

MR. FISHER: Yes, but he is now on sick leave.

25X1A9a

[redacted] But he is not retired, then.

MR. FISHER: Oh no! he hasn't even applied for routine retirement.

. . . Off the record . . .

25X1A9a [redacted] I guess your idea for this Retirement Board is somewhat the idea I had, that did he shop around and find a doctor who would tell him what he wanted to hear? or is this good medical opinion.

MR. FISHER: That is right.

25X1A9a [redacted] And I think maybe if the law of averages is any good, maybe three or four ought to have a look at the man.

25X1A9a [redacted] What bothers me, though, is the question of whether this is more than physical as far as his personal physician is concerned.

MR. FISHER: Well, his doctor hasn't mentioned anything else.

25X1A9a [redacted] He has avoided it, really. But if he is saying it's purely on the basis of the physical and they are [redacted] saying he is physically capable, ILLEGIB then you've got the thing drawn.

25X1A9a [redacted] But he did say that nothing came out of their psychiatric interview.

25X1A9a [redacted] But I'm wondering whether his doctor thinks it's mental.

MR. FISHER: There is nothing to indicate he does. He says he's concerned about Chick's losing weight, because he had lost 15 pounds in a relatively short period of time. But who is to say that wasn't due to just general frustration at this whole problem.

25X1A9a [redacted] Well, he describes-- And these notes were taken out of reports in Tietjen's file-- He describes not only the deterioration of the right and left arms but a deterioration of discs in the C-3 and C-4 area -- which Tietjen confirmed -- in addition to other symptoms such as inability to hold a ILLEGIB newspaper and read a [redacted] newspaper.

MR. FISHER: What are you reading from ?

25X1A9a [redacted] These are just summary notes from the medical file.

It says he is unable to hold a telephone - cradle a phone, can't sleep on his right side, cannot extend his arms -- this type of thing. And I think what has happened -- judging by his reaction in my conversations with the man -- is that this is bothering him more mentally than it is physically - or at

least as much - that he just isn't the same man that you and I have known all of these years.

25X1A9a [redacted] I tried to express this thought without indicating a psychiatric problem. Chick does feel that he is less, by far, the man that he was a few years ago.

25X1A9a [redacted] And from our viewpoint he is not the same man - he is not as usable now, not as good for us now, and he's in such a state of tension --

25X1A9a MR. FISHER: That he feels he is better getting out of here.

[redacted] Roughly how many years of service has he had?

25X1A9a MR. FISHER: Almost 23 years.

[redacted] It would be considerably to his benefit to get a disability retirement.

MR. FISHER: Well, if you compare it to running out all of his sick leave as a sick man, then truly the only benefit left is the tax break. And I really didn't think that that was the worst solution in the world -- rather than fighting this thing. But he is certainly ready to fight it. Now you realize that I'm sitting with a recommendation from the doctor that this should be turned down. And I just haven't said this to the man yet, but when I do - assuming it's still a turn down - then it would give him the right to appeal to the Director. This would place the Director in a difficult position because he is not in any better position than we are, and he would probably turn it over to the IG -- and the IG wouldn't be in a much better position. And I have a feeling that the most the IG could do would be to say to the Director: Why don't we send him to another doctor and get another opinion.

25X1A9a [redacted] Do you think that would really help solve the case? - an outside doctor who has to rehash all the information already available to us? He won't have all of the information.

25X1A9a [redacted] Well, you will hear from Chick, who is obviously biased,
25X1A5a1 that [redacted] is [redacted] "no-goodnick" and that obviously he was never going to ILLEGIE

change his mind, because he has taken this stand from the beginning -- and he said he was the wrong man to have sit on this Board because he was preconditioned, having already said that Chick is all right -- at least that is Chick's feeling -- and

25X1A9a

Chick tends to play down that [redacted] or Dr. Tietjen contribution because, he says, "mine is an unusual ailment, so they're listening to [redacted]

25X1A5a1

25X1A5a1

So, here is [redacted] on one side, and here is his doctor on the other, and isn't the least that a long and faithful employee is entitled to is to bring in a third doctor? As far as Chick is concerned the Board is an entity and his own doctor is one --

25X1A9a

[redacted] Is there any reason to think that he will accept the findings of a third one if those findings are not what he wants to hear?

MR. FISHER: I can't predict what he will think. We could hear Chick's story, I suppose, and say: We all recommend that the Director of Personnel approve this thing. And I could approve it.

25X1A9a

[redacted] I think you have touched a point that might be important.

25X1A5a1

[redacted] saw him in 1963, didn't he? What did he say at that time?

MR. FISHER: I don't have all the dates right, but at some point he took the position: I see no progression here -- it has stabilized.

25X1A9a

25X1A5a1

[redacted] Except seven years later [redacted] stated there was a one inch atrophy on the right and left arm and a deterioration of the discs in the C-3

25X1A5a1

and C-4 area. This is [redacted]' report.

25X1A9a

25X1A5a1

[redacted] Is [redacted] a regular member of that Board?

MR. FISHER: When they have neurological cases they would be inclined

25X1A

to call in [redacted]

25X1A9a

[redacted] They probably brought him in because he had seen Chick in 1962 and 1963.

MR. FISHER: There is a question, though, should the man who has been involved all the way through, and has more or less taken a position on this, be the one who is sitting on this Board.

25X1A9a

[redacted] I think there's a point there, Harry.

[redacted] Of the judge disqualifying himself.

25X1A9a [redacted] No one here thinks Chick is trying to "didle" the United States Government. We have to assume he is concerned --

MR. FISHER: I'm completely convinced Chick is sincere in his belief he is no longer able to do this job.

25X1A9a [redacted] The next step, then, would be to get another doctor's opinion, and then see what you do with it.

MR. FISHER: What I'm afraid of-- Well, I assume doctors around Washington have been exposed to this. -- is a determination of how much is disabling. But I think you should all appreciate, as I appreciate a little better now, that you cannot tell a GS-15 who has been in the ground operation 25X1A8a air/ground, or whatever, of [redacted] for all these many years, that - "You can do a personnel officer's job at a GS-12 level" - and that that is a satisfactory answer to his problem. He is supposed to be able to either continue doing the work for which he has been trained or is disabled from doing it.

25X1A9a [redacted] I don't think that that is <u>his</u> decision, though - and that is the problem.

25X1A9a [redacted] When Dr. Tietjen was reading from a medical opinion

25X1A5a1 by [redacted] awhile ago concerning his [redacted] condition, he didn't read the last ILLEGIB paragraph -- and I'm afraid I didn't catch it -- but the last paragraph states: It

25X1A9a is my feeling that [redacted] should be given a disability retirement based on his

25X1A5a1 medical condition. This is by [redacted] dated September 1971.

25X1A5a1 MR. FISHER: [redacted] is Chick's doctor. Oh yes! he's been adamant on that.

25X1A9a [redacted] We have all had cases, though, where we've had to assign people to duties other than those they've held for 20 years. I don't see why it should be completely up to him to say: I don't want it.

25X1A9a [redacted] Usually under Civil Service if the man's doctor says the man is disabled, usually that is a big part of the battle.

25X1A9a [redacted] I don't think that's true based on the record. Rarely is a disability retirement approved only on the basis of a statement from the

attending physician.

[redacted] No, but I understand that that was always the big hurdle to get over.

25X1A9a [redacted] You couldn't even get started without it. Once that goes through, it makes it easier for the Agency medics to go along. Then the Commission pretty well falls in line.

25X1A9a [redacted] They are very liberal when it's a voluntary application and he has a doctor's statement to support it.

. . . Off the record . . .

MR. FISHER: Now, to go back to what Dr. Tietjen said again, the fact that John said to send the opinion of another doctor down to him to crank it in, I suppose we could decide to do that in the hope that in reconvening they would take this other doctor's opinion and change theirs. But if they don't, it seems to me this Board can still say: Well, based now on what two doctors say, we can make an independent decision.

25X1A9a [redacted] Yes, you could, Harry, but it seems to me you ought to send it to Tietjen in any event, for whatever comment. Who are we that we're qualified to look at a doctor's report and say what it really says?

MR. FISHER: Okay - I'm with you, John -- except once the Board says - "We think you ought to go out to another doctor." I'm saying that if Tietjen then says - "No, this is no good" - that this Board is necessarily stopped from making its own determination.

25X1A9a [redacted] Oh, I agree with you 100%, Harry!

MR. FISHER: But if we could, I'd like to keep the Director and the IG from being put in the same position we are in.

25X1A9a [redacted] Harry, he made quite a point of saying, though, that it was the statement of his duties that established a frame of reference. We don't have a copy of that. Is it possible that that statement did not accurately

relate what Chick's responsibilities are and if they got a new statement of duties that their reaction to it in terms of his condition might be different?

MR. FISHER: He said whatever the statement of the duties were, it was written into the record over there--

25X1A9a [redacted] And we don't have enough in our file-- If there was a misstatement of his duties that sort of minimized the exertion and that sort of thing, and they are relating that condition to these duties, their frame of reference could be entirely off -- where if given a different kind of statement of duties they might say: Well, even with these impairments he can't do that. It seems to me it's something we better be sure about.

25X1A9a [redacted] But he himself said he can't hold a newspaper.

That's right. No, he can't hold a newspaper because his arms become numb.

MR. FISHER: Well, I'm still bothered-- I feel quite sure that if my muscles were measured today they would be a lot smaller than they used to be. So I think John Tietjen is saying: No, in this case it's more than the normal atrophy.

25X1A9a [redacted] Are you going to have Chick in?

MR. FISHER: Yes, on the 2nd of December. And I've asked Ben to try and get from him his most recent medical report -- and I suppose if we can't get it easily from him, I think we could get a copy from John. And a description of his duties.

25X1A9a [redacted] I had just some summary notes.

. . . . The meeting adjourned at 4:00 p.m. . . . .

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